GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW

111 GREAT NECK ROAD • GREAT NECK, NEW YORK 11021
TEL (516) 393-2200 • FAX (516) 466-5964
www.garfunkelwild.com

SUZANNE M. AVENA
Partner
Licensed in NY
Email: savena@garfunkelwild.com
Direct Dial: (516) 393-2229

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May 9, 2016

Sharon E. Kivowitz, Esq.
Assistant Regional Counsel
Office of the Regional Counsel – Region 2
United States Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007-1866

Re: In the Matter of the New Cassel Hicksville Groundwater Contamination Superfund Site - Index No. CERCLA -02-2016-2012
Comments to March 23, 2016 Settlement Agreement and OU-1 SOW

Dear Ms. Kivowitz:

This letter is written on behalf of Respondents Arkwin Industries, Inc. ("Arkwin") and Tishcon Corp. ("Tishcon"), both Central Plume Respondents in the above referenced matter. As you know, John Martin and I represent Arkwin, and Peter Aufrichtig and Phil Landrigan of McCarthy Fingar LLP represent Tishcon.

In response to the EPA request to provide comments to the March 23, 2016 Revised Settlement Proposal and Revised OU-1 Preliminary Design Investigation ("PDI") and Remedial Design ("RD") Scopes of Work ("SOWs"), this letter provides explanation of our attached edits to the Settlement Proposal. These edits were added to those previously prepared by the Western Plume Respondents. This letter also includes general comments on the SOWs, based on the professional review of our environmental consultant, Environmental Resource Management ("ERM").

Edits to Settlement Agreement

Parties to the Settlement Agreement: It has become apparent from discussions with the Group A, B and C Respondents, that the pool of named Respondents to the Settlement may be shrinking. It is highly unfair to ask Respondents to sign a Settlement Agreement amid the circumstance that, after all this time, certain entities have been or may be dismissed from the case, or found by the EPA to be a *di minimis* party or a party without an Ability to Pay. The exorbitant cost to implement the PDI and RD will fall to fewer entities, already financially stressed from a prior considerable settlement with the State on the same matter. Accordingly, Respondents should not even be required to sign a Settlement Agreement until it is clear which

parties will be joined. Not knowing the answer to this, we have simply marked up the Settlement Agreement to at least ensure that EPA take on the cost of any orphan shares for the Work. For this reason as well, we added the Group D Upgradient Respondents to the caption and the substance of the Settlement Agreement.

Project Coordinator: We have high hopes but realistic doubt that a Project Coordinator will be able to give one submittal to the EPA from multiple Respondents and their consultants working in three designated plumes. Based on the current exercise of providing comments to this revised Settlement Agreement, we already see the failure of Group A, B and C to provide one coordinated submittal to EPA. Thus, we are equally apprehensive about being able to achieve such unity to provide ongoing Coordinated Submittals and Reporting to the EPA on the Work. However, we have promised to use "best efforts" to do so, without added financial penalty if such efforts prove impossible.

Access: Likewise, we will use "best efforts" to obtain access to properties to execute the Work. However, as anyone with an environmental practice on Long Island knows, it is extremely difficult and time consuming to obtain access, particularly in such a congested area. Thus, we have modified the Settlement Agreement to omit financial penalties for delays or failure to obtain access, despite best effort. Furthermore, we have clarified that "reasonable" compensation to third parties to obtain access can be calculated in the aggregate, especially since the cost of restoration at each property will probably be considerable. Our clients are not in a position to pay excessive fees to a multitude of parties to gain access, which can potentially add hundreds of thousands of dollars to the cost of the Work.

Modifications to the Work Plans: The Settlement Agreement as drafted by the EPA allows only for unilateral changes to the Work Plans to be made by EPA, with little or no notice to or input from the Respondents. This is concerning, especially since our environmental consultant, as well as the environmental consultants for other Respondents, have loudly and consistently voiced their belief that the selected remedies will not work. Accordingly, we bolstered the Settlement Agreement to allow for input from the Respondents and our Project Coordinator to EPA modifications and additions to the Work Plans, and consistent access to Dispute Resolution in the event that agreement cannot be reached.

Comments on the OU-1 Scope of Work

There does not seem to be a mechanism for evaluating the data collected in the PDI, before proceeding to the Remedial Design process, in order to determine if the identified remedial techniques will still be appropriate. There needs to be a timely allowance to revisit and, if necessary, revise the existing Site Conceptual Model prior to starting costly pilot testing and remedial design.

Identification of the locations of the vertical profiles in the Central Plume seem arbitrary and located on relatively narrow residential streets in a densely populated area. Based on the aerials, there also seem to be sewers in the center of those streets which are targeted for the use

of the large drilling rigs capable of reaching 350-400 feet below ground surface. Getting road opening permits from the Town of North Hempstead may be difficult and there could be considerable objection from the residents. Thus, the time frames set forth in the SOW are unworkable and need to be re-calculated.

Furthermore, preparation of one Remedial Design Work Plan for all three plumes will be extremely difficult in the time frame given since the PDI data collection will be different for each plume, requiring different time tables. In general, the schedule for the Work needs to be re-evaluated. For example, Relevant Respondents have 90 days to submit the PDI Directive-1 Round 1 Technical Memorandum. Respondents have 9 months to submit the PDI-Round 2 Technical Memorandum sampling of the existing use. However, there are only 75 days to submit the PDI Directive-1 Technical Memorandum Addendum for Round 2. Unless the vertical profiling is completed and the additional monitoring wells are installed, they cannot be sampled as specified in PDI Directive 1, so the time frames are somewhat backward.

The EPA persists in trying to apply In-Well Vapor Stripping ("IWVS") as a potential remedy, when the State's consultant D&B clearly indicated that this technique will not work and EPA's own contractor HDR measured vertical anisotropies ranging to 100 during their investigation. As you know, IWVS is a remedial methodology for volatile organic compounds ("VOCs") in groundwater that is directionally dependent. Thus, as described by HDR, subsurface clay layers and the like are likely to interfere with the success of such a remedy. Except for the High School property, there does not seem to be a large enough location to carry out the pilot test for the IWVS. It is uncertain if it would be possible to gain access to the school property for a period long enough to drill the IWVS and the two observation wells and to pilot-test the remedy for three months or more, not to mention the additional monitoring equipment and treatment equipment for the stripped VOCs, and the expected need to locate a groundwater discharge point for the pilot test. If the High School is the only place to carry out the pilot test, where and how will the eight (8) IWVS wells ultimately be installed?

Very truly yours,

Suzanne M. Avena

Cc: Kevin Maldonado, Esq.
John J. Privitera, Esq.
Miriam E. Villani, Esq.
Robert Lucic, Esq.
Courtney Herz, Esq.
Thomas Smith, Esq.
Charlotte Biblow, Esq.
Peter Aufrichtig, Esq.
Phillip Landrigan, Esq.
Sheila Woolson, Esq.
John Martin, Esq.

GARFUNKEL WILD, P.C.